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Reply to Office action of September 20, 2004

### REMARKS

Claims 1-18, 54-60, and 73-80 are pending in the application. New Claims 81-85 are added. Each of Claims 1-18, 54-57, 59, 60, 73 and 74 is rejected under 35 U.S.C. §103 as being unpatentable over either *Turner, et al.* (US 6,135,988) or *Sageser* (US 6,034,906). Applicants respectfully traverse these rejections.

Applicants appreciate the Examiner's indication that Claims 76-80 are allowed, and that claims 58 (59?) and 75 each contains allowable subject matter. Clarification as to the allowability of Claim 58 or Claim 59 is respectfully requested. New Claims 81-85 are hereby added with structural limitations from claims 58 and/or 75 incorporated herein, which the Examiner considers allowable.

Applicants traverse each of the above §103 rejections and maintain the arguments previously presented in the earlier Preliminary Amendment filed with an RCE dated July 16, 2004 (hereby incorporated). As set forth this Amendment and in previous Responses therein, Applicants believe that the Examiner has yet to establish a proper basis for a non-obvious rejection of the pending claims. To facilitate the issuance of the present Application, Applicants have amended certain Claims, however, to further highlight the Applicants' contribution to the art.

Claim 1 recites a disposable absorbent article having, among other elements, a pair of end strips, each end strip being fixed, along a longitudinal direction, at a position intermediate the core and one of the end edges and extending between the side edges. The end strip includes at least three sections, each section having an elasticity and a position different from the other sections.

A first section is recited as having generally elastic properties and laterally extending in generally parallel relation with the end edges. A second section is disposed longitudinally

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inward of the first section and extends in generally parallel relation therewith. The second section is further recited as being characterized in that the first section is substantially more elastic than the second section. A third section is also recited as being positioned longitudinally inward of the second section, and having an inward portion spaced away from the topsheet and the absorbent core.

With the present Amendment, the second section is further recited as "extending in generally parallel relation with said first section and with said end edges." The first section is also defined as having "a laterally extending outer margin and a laterally extending inner margin [that is] positioned longitudinally inward of said outer margin." In turn, the second section is defined as "having a laterally extending first margin and a laterally extending second margin positioned inward of said first margin." Finally, the second section is also defined such that the "said first and second margins of said second section [are] positioned longitudinally inward of said inner margin of said first section."

Applicants respectfully maintain their position (as presented in previous Responses) that structural limitations in claim 1 providing the relative positioning of the first, second, and third sections, and structural limitations concerning the elasticity of or relative elasticity of the first and second sections have not been shown to be taught or suggested by *Turner* or any of the other cited references, individually or in some combination with *Turner*.

The Examiner has the initial burden of presenting a *prima facie* case of obviousness. M.P.E.P. § 2142-43; see also *In re Peeks*, 612 F.2d 1287 (CCPA 1980). This requires the Examiner to meet three basic criteria. If the Examiner fails to meet any one of these three basic criteria, she has failed to present a *prima facie* case and any rejection based on 35 U.S.C. § 103(a) is improper. Applicants believe that, in the present case, one or more of the these three basic criteria has not been met. Accordingly, the standing rejections under 35 U.S.C. § 103(a) are improper.

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A first criteria requires the Examiner to establish that all claim limitations are taught or suggested by the prior art. *In Re Roy*, 490 F.2d 981 (C.C.P.A. 1974). Applicants acknowledge that the Examiner could point to any three "sections" of the *Turner* article and allege that the three "sections" correspond to those recited in claim 1. The "three sections" of claim 1 are, however, distinct elements having distinct structural limitations. For any alleged "section" to properly correspond to an element, it must, therefore, have the same structural limitation. As an example, for an alleged "second section" to properly correspond, it must:

- (1) be positioned longitudinally inward of the first section;
- (2) extend in generally parallel relation with the first section;
- (3) extend in generally parallel relation with the end edges;
- (4) the first section must be substantially more elastic than it; and
- (5) the second section must have first and second laterally extending margins that are positioned longitudinally inward of the inner margin of the first section.

In the present case, the Examiner has not shown that the cited prior art has each of the first, second, and third sections as recited in claim 1.

In the Office action, it is suggested that FIG. 5 of *Turner* discloses a "first section" wherein parallel strands 54 are located, a "second section" positioned aside of (in respect to FIG. 5) the "first section," and a "third section" on the other side of the "second section" and spaced away from the topsheet and the core. Applicants make note of the following distinctions between each of these three sections and their supposed corresponding parts as recited in the claims:

1. The "second section" does not correspond with the first section of claim 1 because it does not extend in generally parallel relation with the first section and with the end edges of the diaper. On the contrary, the "second section" appears to extend in perpendicular relation with the end edges.

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2. The "second section" does not correspond with the second section of claim 1 because it is not a section of an end strip at all but a "seam 28a" of the "first section."

3. The "second section" does not correspond with the recited second section of claim 1 because the "second section" is *not disposed longitudinally inward* of the first section. It appears, instead, that the "second section" is *disposed generally laterally outward* of the "first section."

4. The "third section" does not correspond with the recited third section of claim 1 because it is not positioned longitudinally inward of the "second section." This "third section" appears, instead, to be aligned with the "second section" (and, as well, with the "first section").

5. If the "second section" had "laterally extending first and second margins," these first and second margins are not positioned longitudinally inward of the "inner margin of said first section." At best, the "inner margin" of the first section would be aligned with the "inner margin" of the second section.

Applicants note further that the modifications to *Turner* which would be required in order to meet the limitations of claim 1 (*i.e.*, creating three elastic and differently positioned sections of an end strip), do not advance any objective or purpose of the *Turner* absorbent article. In other words, there is no incentive, motivation, or suggestion to modify the *Turner* disposable absorbent article in the manner required by claim 1. Without such incentive, motivation or teaching, the *Turner* reference cannot provide the proper basis for a *prima facie* case of obviousness.

As for the *Sageser* reference, the Examiner has not shown that it teaches or suggests an end strip as recited in claim 1, nor does it cure any of the deficiencies of the *Turner* reference. Specifically, the provision of elasticized feature 30 or elasticized panels 32 in *Sageser* has not been shown to teach or suggest a first section, a second section, and/or a third

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section, as recited in claim 1. To meet its burden, the Examiner must show, at least, the following:

- (1) an end strip including at least three sections, each section having an elasticity different from the other sections and a position different from the other section; and
- (2) a first section having generally elastic properties and laterally extending in generally parallel relation with the end edge.

Assuming such a "first section" is found, the Examiner must also find each of the following in the same "end strip":

- (3) a second section disposed longitudinally inward of the same first section (which was found in respect to (1) and (2) above) and extending in generally parallel section with the first section and the end edges;
- (4) the same first section must also be substantially more elastic than this second section;
- (5) a third section positioned longitudinally inward of the second section, and which has an inward portion spaced away from the topsheet and the absorbent core; and
- (6) the same second section must have first and second laterally extending margins that are positioned longitudinally inward of an inner margin of the first section.

Accordingly, claim 1 (and 54) and claims dependent from claim 1 (and 54) are patentable over the cited prior art, and are in condition for allowance.

Furthermore, neither of the *Turner* or *Sageser* references has been shown to teach or suggest the additional elements recited in dependent claims 2-18. For example, in respect to claim 2, the cited references do not teach or suggest a second section formed from an elastic material and having at least one void provided therein. Claim 2 also recites that the void is adapted to substantially de-elasticize an area of the second section adjacent the void. The proposed "second section" (which is a seam 28) in *Turner* (1) is clearly not formed from an

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elastic material, (2) does not have at least one void, and (3) does not have a substantially de-elasticized area adjacent the void.

In respect to dependent claim 3, the proposed "first" and "second sections" are not secured to the topsheet.

In respect to claim 4, the proposed "end strip" is not formed from an elastic material. It also cannot have a second section that is substantially de-elasticized, as recited in claim 5.

Claim 54 recites a disposable absorbent article having an end strip with some features similar to those of the end strip of claim 1. For several of the reasons set forth above with respect to claim 1, claim 54 is also patentable over the cited prior art.

Claim 54 also recites the disposable absorbent article as having a pair of side walls, each side wall having oppositely disposed end portions, wherein one of the side walls extends generally longitudinally between the core and one of the side edges and the other side wall extends generally longitudinally between the core and the other side edge. The disposable absorbent article also includes a containment pocket disposed generally in the crotch region, and bounded by a substantially continuous sidewall disposed about the core and adapted to retain exudates received in the pocket. Finally, an inward section of the end strip is secured to end portions of the side walls such that the side walls are biased generally upward, and the inward section and the side walls substantially form the continuous sidewall of the containment pocket.

Applicants submit that neither the *Turner* nor the *Sageser* reference has been shown to teach or suggest, among other things, an inward section being specifically attached to a pair of side walls such that the side walls are biased generally upwardly. As discussed in Applicants' specification, this provides an advantageous structural feature that is part of the Applicants' unique contribution to the art. The references also do not teach or suggest a substantially

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continuous sidewall or a containment pocket. In fact, it does not disclose any kind of detainment feature at the front waist edge of the diaper.

Accordingly, claim 54, and each of dependent claims 55-60, contains additional patentable subject matter.


In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

No fee is believed to be due at this time. If the appropriate Petition for an Extension of Time is not attached hereto (or any other Petition required of the application), this statement shall serve as Applicants' Petition to the U.S.P.T.O. The Commissioner is hereby authorized to charge any additional fees or credit any overpayments related to this response to Deposit Account No. 50-0997 (AHP-P01896US0), maintained by Paula D. Morris & Associates, P.C. d/b/a The Morris Law Firm, P.C..

The undersigned is available for consultation at any time, if the Examiner believes such consultation may expedite the resolution of any issues.

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Respectfully submitted,

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